

STATE OF MICHIGAN

APR 30 2010

IN THE CIRCUIT COURT FOR THE COUNTY OF LENAWEЕ

DAVID KIRCHER #624025

Plaintiff,

File No. 10-3713-AV

vs.

STATE HISTORIC PRESERVATION REVIEW BOARD

Defendant.

ORDER

At a session of said Court held at the Courthouse in the City of Adrian, County of Lenawee and State of Michigan on this 26th day of April, 2010.

PRESENT: HONORABLE TIMOTHY P. PICKARD, Circuit Judge

After review of Plaintiff's petition for review of the January 22, 2010 decision of the State Historic Preservation Review Board, and the Court having reviewed the agency record, and the Court being fully advised in the premises;

The Court finds that Plaintiff's petition for judicial review was not timely filed within the 60 days of date of mailing notice of the final decision as required by MCL 24.304(1). The Court further finds that Plaintiff's petition for review does not comply with the requirements of MCL 24.303(3). The Court further finds that the decision of the State Historic Preservation Review Board was based on competent, material and substantial evidence based on the agency record as a whole. Therefore, the decision of the State Historic Preservation Review Board should be affirmed and Plaintiff's petition for judicial review should be dismissed.

IT IS HEREBY ORDERED that the decision of the State Historic Preservation Review

Board is **AFFIRMED** and the Plaintiff's petition for judicial review is **DISMISSED** for the reasons set forth above.



HON. TIMOTHY P. PICKARD
CIRCUIT COURT JUDGE

Dated: April 26, 2010

STATE OF MICHIGAN)
COUNTY OF LENAWEÉ)

I hereby certify that on the 26th day of April 2010
I served a copy of Order upon the
following persons at their last known address
by mailing a copy regular mail, postage fully
prepaid. Daniel Kischer,
Charles Dykstra, Thomas Shimpf 2
Scott Grammar.
Signed: X Drake

STATE OF MICHIGAN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
STATE HISTORIC PRESERVATION REVIEW BOARD

DAVID KIRCHER,
Petitioner,

v

SOAHR Docket No. 2009-1418
Agency No. 09-035-HP

**YPSILANTI HISTORIC DISTRICT
COMMISSION,**
Respondent.

FINAL DECISION AND ORDER

This matter involves an appeal of a July 14, 2009 written decision of the Ypsilanti Historic District Commission which approved an application by the City of Ypsilanti to demolish the residential structure located in the Ypsilanti Historic District at 107 E. Cross, Ypsilanti, Michigan (Structure).

The State Historic Preservation Review Board (Board) has jurisdiction to consider this appeal pursuant to Section 5(2) of the Local Historic Districts Act, as amended, MCL 399.205.

At the request of the Board, the State Office of Administrative Hearings and Rules (SOAHR), which is housed in the Michigan Department of Labor and Growth, convened an administrative hearing on October 26, 2009. At issue was whether the Respondent improperly granted the City of Ypsilanti's request to demolish the Structure.

A Proposal for Decision was issued on December 10, 2009, by SOAHR Administrative Law Judge Kenneth Poirer, and true copies of the Proposal were served on the parties and their legal representatives, if any, pursuant to Section 81(1) of the Administrative Procedures Act of 1969, as amended, being Section 24.281 of Michigan Compiled Laws.

The Board considered this appeal, along with the Proposal for Decision and all post-hearing filings and responses to filings submitted by the parties, at its regularly scheduled meeting conducted on January 15, 2010.


Having considered the proposal for Decision and the official record made in this matter, the Board voted 8 to 0, with 0 abstention(s), to ratify, adopt and promulgate the Proposal for Decision as the Final Decision of the Board in this matter and to incorporate the Proposal into this document, and,

Having done so,

IT IS ORDERED that the appeal is DENIED and the case is DISMISSED.

IT IS FURTHER ORDERED that a true copy of this Final Decision and Order shall be served on the parties and their legal representatives, if any, as soon as is practicable.

Dated: 22 January 2010


Dr. Richard H. Harms, Chairperson
State Historic Preservation Review Board

NOTE: Section 5(2) of the Local Historic Districts Act provides that an applicant aggrieved by a decision of the State Historic Preservation Review Board may appeal the Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under Section 104(1) of the Administrative Procedures Act, such appeals must be filed with the circuit court within 60 days after the date notice of the Board's Final Decision and Order is mailed to the parties.

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2009-1418
David Kircher, Petitioner	Agency No.	09-035-HP
v	Agency:	History, Arts & Libraries
Ypsilanti Historic District Commission, Respondent	Case Type:	Appeal

Issued and entered
this 10th day of December, 2009
by Kenneth P. Poirier
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL FINDINGS

This matter involves the administrative appeal of a decision of the City of Ypsilanti Historic District Commission (the Commission), which approved an application to demolish the residential structure located at 107 E. Cross in the City of Ypsilanti, Michigan (the Structure). The Structure is situated in an Ypsilanti Historic District.

The Commission made its decision on July 14, 2009. The Petitioner filed the instant appeal on September 9, 2009.

The appeal herein was filed under the provisions of Section 5 (2) of the Local Historic Districts Act (LHDA).¹ Section 5 (2) provides that an applicant aggrieved by a decision of an historic district commission may appeal to the State Historic Preservation

¹ 1970 PA 169, Section 5, MCL 399.205

Review Board (the Review Board), an agency of the Michigan Department of History, Arts and Libraries (the Department)².

Upon receiving the appeal, the Review Board directed the State Office of Administrative Hearings and Rules (SOAHR) to conduct an administrative hearing for purposes of accepting evidence, hearing legal arguments, and preparing a "proposal for decision." SOAHR convened a hearing on October 26, 2009, in the Cadillac Place, Thirteenth Floor, Suite 13-450, 3024 W. Grand Boulevard, Detroit, Michigan. The hearing was held in accordance with procedures prescribed in Chapter 4 of the Administrative Procedures Act of 1969.³

The Petitioner, David Kircher, did not appear personally, but he was represented by his Attorney, George E. Ward.⁴ Charles N. DeGryse, Attorney for the City of Ypsilanti, appeared in these proceedings on behalf of the Respondent, with the Commission Chair, Jane Schmiedeke, the Ypsilanti City Planner, Richard Murphy, and a Commission Assistant, Anne Stevenson. Kenneth P. Poirier, an Administrative Law Judge assigned to the case by SOAHR, served as Presiding Officer.

ISSUE

Did the Respondent Commission on July 14 2009 improperly grant the request for demolition of the Structure at 107 E. Cross in Ypsilanti, Michigan?

² Executive Order 2009-36 abolished the Department of History, Arts and Libraries, effective October 1, 2009. At the time of the Petitioner's appeal, however, the Department still existed. References to the Department of History, Arts and Libraries as "the Department" will therefore be retained as such in this decision.

³ 1969 PA 306, Section 71 et seq., MCL 24.271 et seq.

⁴ At the time of the hearing, the Petitioner was an inmate at the Parnall Correctional Facility in Jackson, Michigan. His attorney, Mr. Ward, requested the undersigned on October 13, 2009, to issue a writ of Habeas Corpus to allow him to attend the hearing held in this matter. The undersigned denied the request, however, by an order dated October 14, 2009, for lack of jurisdiction under Michigan Court Rule 3.304.

EXHIBITS

The parties submitted the following exhibits for consideration at the hearing.

Description

Exhibit 1	October 26, 2006 Letter to Petitioner
Exhibit 2	July 14, 2009 Commission Meeting Minutes
Exhibit 3	March 9, 2007 Letter to Petitioner
Exhibit 4	May 7, 2007 Letter from Petitioner to Review Board
Exhibit 5	November 13, 2003 Certificate of Compliance and Occupancy
Exhibit 6	March 25, 2004 Ypsilanti Fire Department Document
Exhibit 7	August 18, 2006 Application for Building Permit
Exhibit 8	Petitioner's June 22, 2009 Response Opposing City's Request to Raze
Exhibit 9	September 25, 2007 Letter to Petitioner
Exhibit 10	June 5, 2006 Web Page, Washtenaw County Construction Code Board of Appeals Procedures
Exhibit 11	October 1, 2007 Circuit Court Decision Allowing Demolition
Exhibit 12	Respondent's October 15, 2009 Reply to Petitioner's Claim of Appeal (When the Reply was submitted to the undersigned at the hearing, it was missing the Court of Appeals opinion, the Court of Appeals Order Denying Motion for Reconsideration, the City of Ypsilanti's Complaint for Superintending Control, and the City's Brief in Support of the Complaint for Superintending Control, noted in Exhibit 12 as being attached to the Exhibit as Tabs F, G, H, and I, respectively.)
Exhibit 13	Petitioner's September 17, 2009 Application for Leave to Appeal to Michigan Supreme Court (Submitted at hearing without internal exhibits.)
Exhibit 14	Respondent's October 12, 2009 Brief in Opposition to Petitioner's Application for Leave to Appeal to Michigan Supreme Court (Submitted at hearing without internal exhibits.)

FINDINGS OF FACT

On October 1, 2007, Washtenaw Circuit Judge Donald E. Shelton issued an Order with Findings of Fact and Conclusions of Law, concerning the Structure located on 107 E. Cross Street in Ypsilanti, Michigan. The City of Ypsilanti, through its Fire Marshal, Jon Ichesco, had requested the authority to raze the Structure on the grounds that the property was a hazardous structure, and that the City needed to abate the nuisance that the Structure represented. Judge Shelton's October 1, 2007 Order granted the request to raze the Structure. *Jon Ichesco and The City of Ypsilanti v. David Kircher*, No. 04-825 CH, Washtenaw Circuit Court (October 1, 2007).

Judge Shelton's Order resulted from a Complaint to Abate Nuisance and/or Raze the Building that had been filed on August 12, 2004. Problems with the Structure first came to the attention of the City of Ypsilanti on May 16, 1997, when the Ypsilanti Fire Department responded to a complaint from one of the Structure's tenants concerning gas fumes in the building. A series of disputes then followed between the Petitioner and the City of Ypsilanti, over the next several years.

In 1997, following the initial gas fumes complaint, the property was condemned. The Petitioner then corrected the unsafe conditions, and the City of Ypsilanti issued a certificate of occupancy during the spring of 1999.

On January 4, 2001, following tenant complaints regarding black mold, and problems with the Structure's furnace, lights and gas hookup, the building was again condemned. During an inspection on July 10, 2002, the City of Ypsilanti's building inspector found 126 code violations. As a result of repair work that he initiated, the Petitioner received a temporary certificate of occupancy for the Structure. The certificate

required that he obtain approval from the Commission for needed repairs. The temporary certificate of occupancy expired, however, when the repairs were never completed.

On March 25, 2004, the Structure caught fire. The property was deemed unfit for occupancy, and the utilities were terminated. In late April 2004 the City's representatives informed the Petitioner that he needed to provide two estimates from licensed contractors, showing how much it would cost to repair the damage caused by the March 25, 2004 fire. The two estimates had to amount to an average figure equal to or less than the 2004 State Equalized Value of the property, which was \$49,600. On or about April 9, 2004, the City's Fire Marshal had received an estimate from a company specializing in disaster repair work. According to this estimate, it would cost \$107,000 to repair the Structure.

The Petitioner provided two estimates for repairs, averaging approximately \$15,000. Because neither estimate provided sufficient detail concerning the anticipated repair work, and because of the considerable discrepancy between the Petitioner's repair estimates and the estimate obtained by the City's Fire Marshal, the City denied the building permit required to accomplish the repair work.

As indicated above, the City filed a Complaint to Abate Nuisance and/or Raze the Building on August 12, 2004. While the Complaint was pending resolution, the Structure caught fire again on October 20, 2004; on March 26, 2005; and on April 5, 2006.

On May 19, 2006, a Motion for an Order to Show Cause why the Structure should not be razed was filed. An evidentiary hearing was held on September 7, 2006, during which the Petitioner asked for permission to repair the Structure to avoid nuisance remedies sought by the City. On September 25, 2006, Judge Shelton entered an Order

requiring the Petitioner to submit detailed plans, on or before October 16, 2006, for all the repairs to the Structure that he planned to make, to the Ypsilanti City Building Department, and to the Commission, along with an application to the Commission for authorization to make the planned repairs. Judge Shelton also ordered the Commission to act on the proposals and application to determine whether the repair proposals and application met applicable codes, and whether the proposals were sufficient to abate the nuisance, within three weeks. A review hearing was scheduled on November 15, 2006.

The November 15, 2006 review hearing was rescheduled to December 13, 2006, to give the Petitioner more time to submit requested information to the Commission to obtain required permits. By December 13, 2006, the Commission had received the Petitioner's application for repairs. The Commission approved the Petitioner's request for approval to repair aluminum siding on the Structure, but denied additional permits sought by the Petitioner for lack of sufficient detail.

At the December 13, 2006 hearing the Petitioner asserted various appellate rights to which he was entitled under State law. The City, on the other hand, argued that the repairs that the Petitioner had explained that he planned to make were insufficient to correct serious problems associated with the Structure. Specifically, the City argued that, with respect to exterior repairs alone, the Petitioner needed to replace the existing roof, exterior siding, windows, doors, frames, and trim. Additionally, the City argued that the Petitioner needed to repair or replace all damaged and decayed porch framing, decking, posts, and trim. He needed to replace noncompliant trim, rakes, soffits, fascias, sills, flashings and friezes. Further, the Petitioner needed to install appropriate sealant, primer and exterior weather resistant paint, and he needed to repair the Structure's chimneys. At

the conclusion of the December 13, 2006 hearing, Judge Shelton took the matter under advisement.

On February 26, 2007, the Petitioner submitted an application to the Commission to allow the Petitioner to refrain from replacing a porch that had been previously removed from the east side of the Structure. On the advice of the City Attorney's Office, the Commission on March 9, 2007 rejected the Petitioner's application pending resolution of judicial proceedings involving the Structure. On September 25, 2007, the Commission approved the Petitioner's request to refrain from replacing a shed roof over the Structure's east porch and outlined other repair work that was to be done.

As indicated above, Judge Shelton issued his Findings of Fact and Conclusions of Law on October 1, 2007. In doing so, he cited the definition of a nuisance found at Section 42-31 of the Ypsilanti City Code:

"Nuisances means whatever annoys, injures, or endangers the safety, health, comfort or repose of the public; offends the public decency; interferes with, obstructs or renders dangerous any street, highway, navigable lake or stream; or in any way renders the public insecure in life or property is hereby declared to be a public nuisance. Public nuisances shall include, but are not to [sic], whatever is forbidden by any provision of this article."

Judge Shelton went on to point out that under Section 42-32(b)(13) of the Code, "all buildings, walls and other structures which have been damaged by fire, decay or otherwise are declared to be public nuisances." Judge Shelton ended his October 1, 2007 Findings of Fact and Conclusions of Law with the following paragraph:

"The Court finds based on the exhibits and testimony of all witnesses that the building at 107 E. Cross Street is a nuisance. The City and this Court have permitted defendant [Petitioner] more than enough time to submit plans to the City to abate this nuisance and repair the structure into a condition that is fit for human living and free of hazards. It is apparent that defendant [Petitioner] does not intend to make the repairs that are sufficient to abate the nuisance caused by four separate fires, or to make the property into a single family residence. Plaintiff [the

City] may abate the nuisance by razing the building."

On October 25, 2007, Judge Shelton denied the Petitioner's motion for reconsideration. The Petitioner appealed Judge Shelton's order to the State of Michigan Court Of Appeals. On January 4, 2008, the Court of Appeals granted the Petitioner's motion for a stay pending appeal. On March 25, 2009, the Court of Appeals lifted its stay of enforcement of demolition with respect to the Structure to permit the City to seek approval of demolition from the Commission, and to solicit nonbinding bids for the Structure's possible demolition. On June 9, 2009, the Court of Appeals affirmed Judge Shelton's October 1, 2007 order. *Ypsilanti Fire Marshall, and City of Ypsilanti v David Kircher*, No. 281742. unpublished opinion per curiam of the Michigan Court of Appeals (June 9, 2009).

On July 14, 2009, the Commission held a public hearing concerning the City's application that it had filed to demolish the Structure. The City Attorney briefly recounted the history of the property as a public nuisance, pointing out that in June 2009, the Court of Appeals had affirmed the Circuit Court decision that the Structure was a nuisance. The Petitioner's agent informed the Commission that the Petitioner hoped to repair the property, that he believed that repairs would be less costly than projected, that he planned to appeal the court order allowing the City to apply for demolition, and that he wished that the Commission would table the demolition application until the resolution of the appeal by the Michigan Supreme Court. Two local property owners also spoke at the hearing, expressing their belief that the structure needed to be demolished. After discussion, the Commission approved the City's application to demolish the Structure, on the grounds that the Structure was a hazard to the public.

On August 6, 2009, the Court of Appeals denied the Petitioner's motion for reconsideration of its June 9, 2009 per curiam opinion. On September 9, 2009, the Petitioner filed the instant appeal.

CONCLUSIONS OF LAW

As indicated above, Section 5 (2) of the LHDA allows persons aggrieved by decisions of commissions to appeal to the Review Board. Section 5 (2) also provides that the Review Board may affirm, modify or set aside a commission's decision and may order a commission to issue a certificate of appropriateness or a notice to proceed. Relief should be granted where a commission has, among other things, acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial and material error of law. Conversely, when a commission has reached a correct decision, relief should not be granted.

Under Michigan law applicable to administrative proceedings, a party who stands in the position of an applicant, an appellant or a Petitioner typically bears the burden of proof. 8 Callaghan's Michigan Pleading and Practice (2d ed), Section 60.48, p 176, *Lafayette Market and Sales Co v City of Detroit*, 43 Mich App 129, 133; 203 NW2d 745 (1972), *Prechel v Dep't of Social Services*, 186 Mich App 547, 549; 465 NW2d 337 (1990). The Petitioner occupies that position in this proceeding and accordingly bears the burden of proof regarding his factual assertions.

In his appeal of the Commission's July 14, 2009 decision, the Petitioner argues that the Commission's approval of the request to demolish the Structure should be reversed for two reasons. First, the Petitioner asserts in his appeal that "the building has been secured and is not a hazard to anyone in the community." Secondly, the Petitioner

argues that "the building can be readily repaired; and as soon as Kircher receives the permits necessary to make those repairs, they will be accomplished." Petitioner's September 9, 2009 Claim of Appeal. Both of the Petitioner's positions, however, are unavailing.

The Petitioner's first point involves the first of the four conditions articulated by Section 5 (6) of the LHDA, any one of which, if found to exist by the Commission, requires the Commission to issue a notice to proceed. The four conditions articulated by Section 5 (6) are:

- (a) The resource constitutes a hazard to the safety of the public or to the structure's occupants.
- (b) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.
- (c) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.
- (d) Retaining the resource is not in the interest of the majority of the community.

Petitioner's position that the Structure does not constitute a hazard to anyone in the community bears little persuasive weight in the face of the extensive findings of fact articulated by Judge Shelton, and summarized above.

In Michigan, the doctrine of collateral estoppel provides that in a later action between the same parties, the parties in the later action are bound by an earlier decision on a question of fact essential to the earlier judgment, if the decision on that issue is

essential to the earlier judgment, if the parties have had a full opportunity to litigate that issue, if the issue was determined by a valid and final judgment, and if there is mutuality of estoppel. *Nummer v. Treasury Dept*, 448 Mich. 534, 542 (1995), *cert. den.*, 516 U.S. 964 (1995). The doctrine of collateral estoppel must be applied so as to strike a balance between the need to eliminate repetitious and needless litigation and the interest in affording litigants a full and fair adjudication of the issues involved in their claims. *Storey v. Meijer, Inc.*, 431 Mich. 368, 372 (1988). Further, Michigan courts have ruled that a final judgment retains its preclusive effect pending appeal. *Tempel v Kelel Distributing Co., Inc.*, 183 Mich. App. 326, 328 (1990); *City of Troy Building Inspector v Hershberger*, 27 Mich. App. 123, 127 (1970).

In this matter, Judge Shelton's findings of fact were essential to his finding that the Structure was a nuisance. There was no evidence offered in this matter to indicate that either party had anything but a full and complete opportunity to litigate their positions before Judge Shelton. Finally, mutuality is present in the instant matter, because each party was a party to the case before Judge Shelton, and each party was bound by his final decision.

The minutes of the July 14, 2009 meeting show that the Commission members were made aware that the Court of Appeals had affirmed Judge Shelton's decision that the Structure was a nuisance. During the October 26, 2009 hearing before the undersigned, Commission Chair Schmiedeke specifically testified that the Commissioners were very aware of the need for the Commission to be assured that their authority to act on the City's application was justified by the court decisions that had been rendered in the matter up to that point. Given that Judge Shelton had made findings of fact

essential to his decision that the Structure was a nuisance, given that the parties had a full opportunity to litigate their positions before Judge Shelton, and given that the parties were mutually bound by Judge Shelton's final findings and order, it was not unreasonable for the Commission to rely upon Judge Shelton's conclusion, affirmed by the Court of Appeals, that the Structure was a nuisance, and therefore a hazard to the safety of the public.

In like manner, Petitioner's assertion at this late date, before the undersigned, that the repairs will be made as soon as he gets the appropriate permits, is not persuasive. As Judge Shelton pointed out in his decision, the Petitioner has had ample time to present the City with plans showing sufficient detail to indicate how he proposed to repair the Structure. As stated above, the Petitioner bears the burden of proving his factual assertions in support of his position. There was no persuasive showing before the undersigned of any plans drawn up to accomplish the repairs which the Petitioner claimed he was ready to make, nor any bids, nor any other persuasive evidence showing that the Petitioner was in fact ready to make necessary repairs if he only had the required approval from the local housing authorities, including the Commission.

The Petitioner's appeal rightly points out that mere local ordinance violations do not constitute a public nuisance. However, this is a case in which the Structure was condemned more than once, in which no persuasive evidence has been offered to show that the Structure's numerous code violations identified in the summer of 2002 were ever rectified, and that the Structure as a whole had been damaged by four fires from 2004 through 2006.

To reverse a decision because it is arbitrary, capricious, or clearly an abuse of discretion, a reviewing judicial or quasi-judicial body must find that the result of

administrative agency action, for example, the action of the Commission, is so palpably and grossly violative of fact and logic that it shows a perversity of will, a defiance of judgment, or an exercise of passion or bias. An arbitrary decision is one made without reference to principles, circumstances, or significance. *Kurzyniec Estate v Dept of Social Services*, 207 Mich App 531, 537; 526 NW2d 191, 194-195 (1954). Because the Commission relied on the facts as litigated by the parties before Judge Shelton, and as affirmed by the Court of Appeals, it is concluded that the Respondent's approval of the demolition application did not meet the standard of an arbitrary or capricious administrative action amounting to an abuse of discretion.

Inasmuch as the Petitioner has failed to show that the Commission refrained from considering governing principles in general in its decision-making activities, and in particular, that the Commission had ignored relevant principles of the LHDA in making their decision, it is concluded that the Petitioner's request for relief should be denied.

CONCLUSION

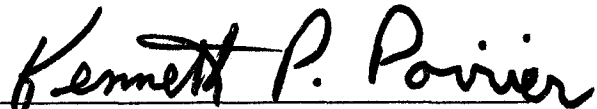
In consideration of the entire official hearing record made in this proceeding, it is concluded that the Respondent Commission did not on July 14, 2009 improperly approve the request for demolition of the house located at 107 E. Cross, in Ypsilanti, Michigan.

RECOMMENDATION

In light of the above, it is recommended that the Respondent Commission's decision of July 14, 2009, be AFFIRMED.

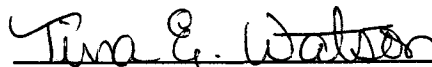
EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fifteen (15) days after the Proposal for Decision is issued. If an opposing party chooses to file a Response to the Exceptions, it must be filed within ten (10) days after the Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the State Historic Preservation Review Board, by submission to the Michigan Department of History, Arts and Libraries, Office of Regulatory Affairs, 702 W. Kalamazoo Street, P.O. Box 30738, Lansing, Michigan 48909, Attention: Nicholas L. Bozen. All filings must also be served on all other parties to the proceeding.


Kenneth P. Poirier
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 10th day of December, 2009.



Tina E. Watson

State Office of Administrative Hearings and Rules

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STATE OF MICHIGAN

JENNIFER M. GRANHOLM
GOVERNOR

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
LANSING

KEITH MOLIN
EXECUTIVE DIRECTOR

February 1, 2010

DAVID KIRCHER
50 S. SUMMIT STREET
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CHARLES DeGRYSE
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YPSILANTI, MI 48197

Re: David Kircher v Ypsilanti Historic District Commission
State Office of Administrative Hearings and Rules Docket No. 2009-1418
Michigan Department of History, Arts and Libraries Case No. 09-035-HP

Dear Mr. Kircher and Mr. DeGryse:

Pursuant to section 85 of the Administrative Procedures Act (MCL 24.285), enclosed you will find a copy of the official Final Decision and Order (FDO) executed in connection with the above-referenced matter. The State Historic Preservation Review Board (Review Board) considered this case at its regularly scheduled meeting on Friday, January 15, 2009. At that time, the Review Board determined to adopt Administrative Law Judge Ken Poirer's Proposal for Decision issued on December 10, 2009, and ordered issuance of an FDO reflecting the Review Board's decision.

The enclosed Final Decision and Order, dated January 22, 2010, has become part of the official case record and has been placed on file with the Michigan State Housing Development Authority, Historic Preservation Legal Office. As noted at the end of the enclosure, under section 104 of the APA, MCL 24.304, an applicant aggrieved by a decision of the Review Board has 60 days to appeal to court.

Sincerely,

Scott M. Grammer
Historic Preservation Legal Office
(517) 373-4765

cc w/enc: Aimee D'Agostini
George Ward
Jane Schmiedeke



STATE HISTORIC PRESERVATION OFFICE
702 WEST KALAMAZOO STREET • P.O. BOX 30740
LANSING, MICHIGAN 48909-8240
(517) 373-1630



PROOF OF SERVICE

I hereby certify that a copy of the foregoing FINAL DECISION & ORDER was served upon all parties named in this matter, their attorneys of record, and appropriate State of Michigan officials and employees, by inter-departmental mail to those persons employed by the State of Michigan and by first class United States mail and/or certified mail return receipt requested, to all others at their respective addresses indicated below, as disclosed by the official case record and other available sources, on February 1, 2010.



Scott M. Grammer
Historic Preservation Legal Office
Michigan State Housing Dev. Authority

AIMEE D'AGOSTINI
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